132-150

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. ~~319.~~ 55

WILLIAM H. ROBERTSON, COLLECTOR OF THE PORT OF NEW YORK, PLAINTIFF IN ERROR,

vs.

ROBERT G. GLENDINNING, GEORGE McLEISH, AND JAMES R. ECCLES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED AUGUST 19, 1886.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. 318.

WILLIAM H. ROBERTSON, COLLECTOR OF THE PORT OF NEW YORK, PLAINTIFF IN ERROR,

VS.

ROBERT G. GLENDENNING, GEORGE McLEISH, AND JAMES R. ECCLES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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1 *Writ of error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the southern district of New York, greeting:

Because in the records and proceedings and also in the rendition of the judgment of a plea which is in the said circuit court before you, between Robert G. Glendinning, George McLeish, & James R. Eccles, plaintiffs, and William H. Robertson, defendant, a manifest error hath happened, to the great damage of the said William H. Robertson as by his complaint appear'. We being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the party aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the second Monday of October, eighteen hundred and eighty-six, in the said Supreme Court, to be then and there held that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done thereon to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the 20th day of May, in the year of our Lord one thousand eight hundred and eighty-six.

TIMOTHY GRIFFITH, *Clk.*

The foregoing writ is hereby allowed.

ADDISON BROWN.

2 (Indorsed:) 9,510. U. S. Supreme Court. William H. Robertson, plaintiff in error, against Robert G. Glendinning & al., defendants in error. Writ of error. Stephen A. Walker, attorney for plaintiff in error.

Due service of a copy of the within is hereby admitted this 20th day of May, 1886.

CHAS. CURIE,
Attorney for Def'ts. in Error.

(Stamp:) U. S. circuit court. Filed May 20, 1886. Timothy Griffith, clerk.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Timothy Griffith, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit,
3 by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify that the following pages, numbered from four to thirty-four inclusive, contain a true and complete transcript of the records and proceedings had in said court in the case of William H. Robertson, plaintiff in error, against Robert G. Glendinning, George McLeish, &

James R. Eccles, defendants in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed at the city of New York, in the southern district of New York, in the second circuit, this seventeenth day of August, in the year of our Lord one thousand eight hundred and eighty-six, and of the Independence of the United States the one hundred and eleventh.

[SEAL.] TIMOTHY GRIFFITH, *Cl'k.*

4 Superior court of the city of New York.

Summons.

ROBERT G. GLENDENNING, GEORGE MCLEISH, & James R. Eccles, plaintiff, against WILLIAM H. ROBERTSON, DEFENDANT. } No. 2.

To the above-named defendant:

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer on the plaintiffs' attorney within twenty days after the service of this summons, exclusive of the day of service, and in case of your failure to appear or answer judgment will be taken against you by default for the relief demanded in the complaint.

Dated, New York, Dec. 15, 1884.

CHAS. CURIE,
Plaintiffs' Attorney, Office No. 44 Exchange Place, New York City.

5 (Indorsed:) No.—. N. Y. superior court. Robert G. Glendenning & als., plaintiffs, against William H. Robertson, defendant. Summons. Chas. Curie, plaintiffs' attorney, 44 Exchange Place, New York City.

Due service hereof admitted this 15 day of Dec., 1884.

6 *Notice of appearance and demand.*

N. Y. superior court.

ROBERT G. GLENDINNING & AL. *versus* WILLIAM H. ROBERTSON. } 2.

You will please take notice that I am retained by and appear as attorney for the defendant in this action and demand service of a bill of particulars of the plaintiffs' claim herein and a copy of the complaint and all papers in this action upon me at my office in the United States court building in the city of New York.

Yours,

ELIHU ROOT,
United States Attorney, Attorney for Def't.

To C. CURIE, Esq.,
Attorney for Pl'ff.

New York, Dec. 22, 1884.

7 (Indorsed:) 9510. N. Y. superior court. R. G. Glendinning & al. versus William H. Robertson. Notice of appearance. Elihu Root, U. S. attorney, att'y for def't. To C. Curie, esq., plaintiffs' att'y.

8 *Certiorari.*

The President of the United States of America to the judges of the superior court of the city of New York, greeting:

We, for certain reasons, being desirous that our circuit court of the United States for the southern district of New York, in the second circuit, shall be certified of a certain cause, commenced before you against William H. Robertson, defendant, by Robert G. Glendenning et al., plaintiffs, do therefore command you that the record and proceedings in the said cause you distinctly and openly send to the said circuit court, at the city of New York, on the 9th day of January, 1885, as fully and amply as the same are remaining before you, by whatever names the said parties may be called therein, together with this writ, that our said court may cause to be further done thereupon what of right ought to be done.

Witness, Morrison R. Waite, esquire, Chief Justice of the Supreme Court of the United States, the 5th day of January, in the year one thousand eight hundred and eighty-five.

TIMOTHY GRIFFITH, *Clerk.*

ELIHU ROOT,
United States Attorney, Attorney for Defendant.

9 (Indorsed:) 9510. U. S. circuit court. R. G. Glendenning *vs.* William H. Robertson. Copy certiorari. Elihu Root, U. S. Attorney, attorney for defendant.

Take notice that the within is a copy of a certiorari this day issued out of the circuit court of the United States for the southern district of New York.

New York, January 5th, 1885.

Yours,

ELIHU ROOT,
U. S. Attorney, Attorney for Defendant.

To C. CURIE, Esq.,
Plaintiff's Attorney.

10 *Complaint.*

Circuit court of the United States for the southern district of New York.

ROBERT G. GLENDENNING, GEORGE MCLUSH, AND James R. Eccles, plaintiffs,
against
WILLIAM H. ROBERTSON, DEFENDANT.

Plaintiff complains:

1st. That defendant was, during the time hereinafter named, collector of customs of the United States at the port of New York.

2d. That plaintiff was, during said times, in trade, under the firm name of Glendenning, McLush & Co., and, as such, duly imported and entered at the port of New York the goods described in the bill of particulars annexed.

3d. The defendant, as such collector, exacted from plaintiff, as and for

duties thereon, and plaintiff, in order to obtain said goods, was compelled to pay, and did pay the sum of one hundred & eighteen $\frac{30}{100}$ dollars, in excess of the amount required by law.

4th. That plaintiff filed with said defendant due and timely protests, in writing, upon each entry of said goods against his decision exacting such duty, setting forth distinctly and specifically the grounds of objection thereto, and also as above stated.

5th. That plaintiff made due and timely appeals in each case to the Secretary of the Treasury, who has affirmed the decision of defendant as to certain of said entries, and as to the rest of said entries, has neglected to answer said appeals, and more than ninety days had elapsed since said unanswered appeals, when this action was commenced.

6th. That the bill of particulars, hereto annexed, states for each importation separately the date of entry at the custom-house, of the payment of duty in excess, of the filing of the said protests, of the appeal to the Secretary of the Treasury, and of his decision thereon, together with the other particulars required by law, and is made a part hereof.

7th. That said sum, so exacted as aforesaid, has never been repaid to plaintiff, and is still due and owing to him.

Wherefore, plaintiff demands judgment against defendant for one hundred & eighteen $\frac{30}{100}$ dollars, with interest on the several sums named in the bill of particulars, from the several dates of payment as appear thereby, together with the costs and disbursements of this action.

CHAS. CURIE,
Attorney for Plaintiff.

(Indorsed:) 9510. U. S. circuit court. Robert G. Glendenning & als., plaintiffs, against William H. Robertson, defendant. Complaint. Chas. Curie, plaintiff's attorney, 44 Exchange Place, New York City.

Due service of a copy hereof admitted this 8th day of Jan., 1885.

ELIHU ROOT,
U. S. Attorney, At'y for Def't.

12 *Bill of particulars.*

Name of importer, Glendinning McLeish & Co.

Manf. of linen emb'd.

Whence imported.	Name of vessel.	Date of invoice.	Date of entry at custom-house.	Amount of duty illegally exacted.	Date of payment of duties in excess.	Protest filed.	Date of appeal to Secretary of the Treasury.	Date of Secretary's decision.
		1884.	1884.		1884.	1884.	* 1884.	1884.
Glasgow....	State of Georgia..	May 10	May 23	$10.30	May 24	June 14	June 14	Oct. 3
Do.....	State of Nevada..	May 15	May 31	8.10	June 1	June 28	June 28	Oct. 3
Do.....	State of Nebraska.	May 27	June 9	19.65	June 10	July 2	July 2	Oct. 3
Liverpool...	Britannic.....	June 1	June 26	9.25	June 27	July 26	July 26	(*)
Glasgow....	State of Nebraska	July 11	July 24	7.35	July 25	Aug. 16	Aug. 16	(*)
Do.....	State of Georgia..	Aug. 1	Aug. 14	33.65	Aug. 15	Sept. 10	Sept. 10	(*)

* No ans. rec'd.

13 (Indorsed:) 9510. U. S. circuit court, southern district of New York. Robert G. Glindenning and ots., against Wm. H. Robertson. Bill of particulars.

NEW YORK, *Jan.* 8, 1885.

To ELIHU ROOT, Esquire,
Defendant's Attorney.

SIR: Please to take notice that this action is brought to recover duties illegally exacted by the defendant, as collector of customs at the port of New York, and the within is the plaintiffs' bill of particulars.

CHAS. CURIE,
Plaintiffs' Attorney.
44 *Exchange Place, New York City.*

Due service hereof admitted this 8 day of Jan., 1885.

ELIHU ROOT,
U. S. Att'ny, Defendant's Attorney.

14 *Answer.*

Circuit court of the United States for the southern district of New York.

ROBERT G. GLENDENNING, GEORGE MCLEISCH, and JAMES R. Eccles, *versus* WILLIAM H. ROBERTSON, COLLECTOR, ETC. } 9510.

The defendant answers to the complaint as follows:

I. He denies that the true duty or that the true and lawful rate of duty, on the goods referred to in the complaint, was as stated in the complaint; and he denies that the plaintiffs were compelled to pay or did pay defendant as collector or otherwise the sum stated in the complaint or any sum in excess of the amount required by law as duties upon the said goods, or that any sum of money unauthorized by law was exacted as duties on said goods or otherwise.

II. He denies that the plaintiffs filed with defendant any protest or protests in writing in which the grounds of objections to the exaction of duties on said goods were distinctly and specifically stated.

III. He denies that the sum stated in the complaint or any sum is now due and owing the plaintiffs.

IV. He denies that he has any knowledge or information sufficient to form a belief as to whether the goods alleged in the complaint to have been imported at the times therein mentioned were in fact such goods as are described in the said complaint.

15 V. And further answering, defendant alleges that all moneys received by him from the plaintiffs in respect of the importations in the complaint alleged to have been made, were demanded of plaintiffs and were by plaintiffs voluntarily paid to him in his capacity as collector of customs, as and for duties due the United States on imported merchandise and were forthwith before the commencement of this action and before the receipt by defendant of any protest or objection on the part of the plaintiffs paid over by the defendant in his official capacity aforesaid to the United States and placed beyond his control.

VI. And further answering, defendant alleges that all moneys received by him from the plaintiffs in respect of the importations in the complaint alleged to have been made, were sums due from plaintiffs to the United States as duties according to the rate of duty imposed by law upon articles of merchandise imported by plaintiffs and assessed with duty, and no other sums than duties regularly assessed and ascertained and liquidated according to law upon the plaintiffs entry thereof were collected or received by defendant from the plaintiffs.

Wherefore defendant demands judgment, that the complaint be dismissed with costs.

ELIHU ROOT,
United States Attorney, Attorney for the Defendant.

(Indorsed:) 9510. U. S. circuit court, southern district of New York. R. G. Glendenning & al., vs. W. H. Robertson, collector, etc. Answer. Elihu Root, United States attorney, attorney for defendant. New York, May 9, 1885. To C. Curie, esq., plaintiffs' attorney.

16 *Minutes of trial.*

At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Tuesday, the 8th day of December, in the year of our Lord one thousand eight hundred and eighty-five.

Present: The honorable Hoyt H. Wheeler, sitting as circuit judge.

ROBERT G. GLENDINNING ET. AL.
vs.
WM. H. ROBERTSON. } 9510.

Now come the plaintiffs by Stanley, Clarke & Smith, esqrs., their attorneys, and move the trial of this cause; likewise comes the defendant by Samuel B. Clarke, esq., ass't U. S. atty, his attorney. Thereupon a jury is empaneled, and the cause proceeds to trial. Counsel for the respective parties herein stipulate in open court, that if the verdict be for the plaintiffs, it shall be for the plaintiffs generally, subject to adjustment at the custom-house under the direction of the court. After hearing the evidence of the parties, and the argument of counsel, the court direct the jury to find a verdict for the plaintiffs generally. Thereupon the jury render a verdict whereby they find for the plaintiffs generally.

17 It is ordered that a certificate of probable cause be entered herein, and that the defendant have a stay of proceedings on said verdict for thirty days.

A copy.

TIMOTHY GRIFFITH, *Clerk.*

18 *Certificate of adjustment.*

(93.)

United States circuit court for the southern district of New York.

N. S. 9510.] CUSTOM-HOUSE, NEW YORK,
Collector's Office, May 10th, 1886.

R. G. GLENDINNING ET. AL. }
vs. } Verdict dated
WILLIAM H. ROBERTSON. }

SIR: The adjustment in the above case is as follows:

Amount overpaid	104.20
Interest added to May 10, 1886	11.73
	$115.93

Respectfully,

E. L. HEDDEN,
Collector.

To the UNITED STATES DISTRICT ATT'Y,
For the Southern District of New York.

19 (Indorsed:) 9510. No. 93. Collector, etc., for the southern district of N. Y. 187, reports adjustment of case of Glendinning vs. Robertson.

20 *Judgment.*

U. S. circuit court, southern district of New York.

ROBERT G. GLENDENNING ET AL. }
vs. } No. 9510.
WILLIAM H. ROBERTSON. }

The above-entitled cause having been brought on for trial on the 8th day of December, 1885, before the Hon. Hoyt H. Wheeler, sitting as judge of this court, and a jury, and a verdict having thereafter been found for the plaintiffs generally, by direction of the court, subject to adjustment at the custom-house, and the amount for which plaintiffs were entitled to a verdict having been thereafter adjusted, as appears by the certificate of the collector of customs hereto annexed, and the costs having thereafter been duly taxed;

Now, upon motion of Charles Curie, esq., attorney for plaintiffs,

It is ordered and adjudged that the plaintiffs, Robert G. Glendenning, George McLeish, and James R. Eccles, recover of William H. Robertson, the defendant herein, the sum of one hundred and four dollars and twenty cents ($104.20) damages, eleven dollars and seventy-three
21 cents ($11.73) interest, and forty-six dollars and eighty-five cents

($46.85) costs, making in all the sum of one hundred and sixty-two dollars and seventy-eight cents ($162.78) and have execution therefor.

104.20	
11.73	
46.85	
$162.78	

Judg't signed this 17th day of May, 1886.

JOHN A. SHIELDS,
Deputy Clerk.

(Endorsed:) U. S. circuit court. Robert G. Glendenning et al. vs. W. H. Robertson. Judgment roll. Charles Curie, esq., attorney for pl'ff's, 44 Exchange Place, N. Y. City. U. S. circuit court. Filed May 17, 1886. Timothy Griffith, clerk.

22 *Bill of exceptions.*

United States circuit court, southern district of New York.

ROBERT G. GLENDENNING ET AL.
against
WILLIAM H. ROBERTSON, COLLECTOR OF CUSTOMS, etc. } N. S. 9510.

And afterwards, to wit, on the 8th day of December, 1885, this case came on to be tried at a stated term of the above-named court duly holden before the honorable Hoyt H. Wheeler, district judge of the United States for the district of Vermont, duly assigned to hold this court, and a jury duly empanelled and sworn to try the issues herein.

The above-named parties appeared respectively by their counsel: Stephen G. Clarke and Charles Curie, esqs., for the plaintiffs, and Samuel B. Clarke, esq., assistant U. S. attorney, for the defendant; and during the course of the trial, and before the rendering of the verdict therein, the counsel for the defendant did take and allege certain exceptions
23 to certain rulings of the court, which said exceptions were by the court duly allowed, and are hereinafter more at large set out.

To sustain the issues upon his part, the plaintiffs introduced evidence tending to prove that in the year 1884 the plaintiffs imported into the port of New York certain embroidered linen handkerchiefs hereinafter more specifically described, upon which the defendant, upon the entry thereof, levied and collected a duty of thirty-five per cent. ad valorem, under Schedule J of the tariff act of March 3, 1883; that the plaintiffs protested against this assessment, claiming in substance that these importations, consisting of embroidered linen handkerchiefs, under existing laws, and particularly by virtue of Schedule J of the act of March 3rd, 1883, were liable to duty at no more than thirty per cent. ad valorem, and not at thirty-five per cent. ad valorem, as levied by the defendant; that appeal was duly taken to the Secretary of the Treasury, and this action seasonably brought to recover the alleged excess of duties collected.

24 The plaintiffs produced samples of the importations in question.

GEORGE MCLEISH, being duly sworn, testified in behalf of the plaintiffs that he was one of the plaintiffs and engaged in the business of importing linens; and being showed the samples further testified: The body of the cloth of these articles is linen cambric; that is flax. We call them embroidered handkerchiefs; the trade calls them embroidered handkerchiefs. They are embroideries made by hand; all this [indicating] open work is embroidery. This block is sewed in by hand; all this initial work is done by hand, and this little work, all this scollop, is done by hand—embroidered. The embroidery is done with cotton.

Being cross-examined by the counsel for the defendant, the witness further testified:

I do not dispute that they are handkerchiefs. They are handkerchiefs—embroidered handkerchiefs; they are handkerchiefs that have been embroidered.

By the counsel for the plaintiffs:

Q. "They are more than handkerchiefs; they are embroidered?—A. Yes, sir; they are embroidered.

25 Q. "When a person sends you an order for a handkerchief do you send him this?—No, unless he specifies them."

By the counsel for the defendant:

Q. "They do specify the particular variety that they want, don't they?—A. Yes; hem-stitched or embroidered or plain or otherwise or mourning; and those dealing in them need to know the variety desired before they can fill an order. There are, I believe, other linen articles besides handkerchiefs that are embroidered."

By the counsel for the plaintiffs:

Q. "What percentage, or about what percentage, of the value of the articles represented by these samples does the embroidery represent?"

(Counsel for the defendant objects to the question upon the ground that it is not material to the issue.)

THE COURT. "I do not see its materiality."

COUNSEL FOR THE PLAINTIFFS. "I asked that question with a view of its appearing affirmatively on the record that the embroidery is something substantial in respect to these handkerchiefs and sufficient to characterize them as embroideries."

26 THE COURT. "He may answer the question. I don't see that it is of any consequence, but he may answer it.

COUNSEL FOR THE DEFENDANT. "I will concede that the embroidery is a substantial part of the handkerchiefs.

COUNSEL FOR THE PLAINTIFFS. "Then I withdraw the question."

Both parties here rested.

Counsel for both parties thereupon moved for a direction of a verdict for the plaintiffs and defendant respectively upon the state of facts presented.

The court denied the motion of the defendant, and the defendant excepted to this ruling, which exception was duly allowed.

The court directed the jury to return a verdict for the plaintiffs, to which ruling the counsel for the defendant excepted, which exception was duly allowed.

The jury returned a verdict for the plaintiffs in accordance with the direction of the court.

And inasmuch as the exceptions, matters, and things aforesaid would not appear by the record, I have settled, allowed and signed this
27 bill of exceptions on the prayer of the said defendant by his counsel; and

It is ordered that the same be filed as part of the record herein with like force and effect as if the same had been reduced to writing and signed and filed before the case was given to the jury.

Witness my hand this 15th day March, 1886.

HOYT H. WHEELER.

28 (Indorsed:) N. S. 9510. U. S. circuit court, southern district of N. Y. Robert G. Glendenning et al., vs. Wm. H. Robertson. Bill of exceptions. Stephen A. Walker, U. S. attorney, attorney for defendant.

Due service of a copy of the within is hereby admitted.

New York M'ch 4, 1886.

STANLEY, C. & S.,
Attorneys for pl'ffs.

(Rec'd U. S. attorney's office March 16, 1886.) To Atty's. for P'lffs. U. S. circuit court, filed March 16, 1886.

TIMOTHY GRIFFITH,
Clerk.

29 *Assignment of errors.*

Supreme Court of the United States.

WILLIAM H. ROBERTSON, PLAINTIFF IN ERROR,
vs.
ROBERT T. GLENDENNING, GEORGE M. LEISHARD, JAMES R. ECCLES, Defendants in error.

Afterwards, to wit, on the second Monday of October, in the same term, before the justices of the said court, at the Capitol in Washington, comes the said plaintiff in error by Stephen A. Walker, his attorney, and says that in the record and proceedings aforesaid there is manifest error in this, to wit, that by the record aforesaid it appears that the judgment aforesaid in the form aforesaid given, was given for the said defendants in error against the said plaintiff in error, whereas by the law of the land, the said judgment ought to have been given for the said plaintiff against the said defendants.

And the said plaintiff prays that the judgment aforesaid for the error aforesaid and other errors in the record and proceedings aforesaid may be reversed, annulled, and altogether held for nothing, and that he, the said plaintiff, may be restored to all things which he has lost by occasion of said judgment, &c.

STEPHEN A. WALKER,
Attor'y for pl'ff in error.

30 (Indorsed:) 9510 United States Supreme Court. William H. Robertson, plaintiff in error, vs. Robert G. Glendenning et al., defend'ts in error. Assignment of error. Stephen A. Walker, att'y for plaintiff in error.

Due service of a copy of the within is hereby admitted this 20 day of May, 1886.

CHAS. CURIE,
Att'y for d'f'ts in error.

U. S. circuit court, filed May 20, 1886.

TIMOTHY GRIFFITH,
Clerk.

31 *Joinder in error.*

U. S. Supreme Court.

WILLIAM H. ROBERTSON, PLAINTIFF IN ERROR,
vs.
ROBERT G. GLENDENNING ET AL., DEFENDANTS in error.

And afterwards, to wit, on the 2d Monday of October term 1886, the said defendant in error, by Charles Curie, his attorney, comes here into court, and says that there is no error either in the record or proceedings aforesaid or in the giving of the judgment aforesaid.

And he prays that the said Supreme Court, before the justices thereof now here, may proceed to examine as well the record and proceeding aforesaid as the matters aforesaid above assigned for error, and that the judgment aforesaid, in form aforesaid given, may be in all things
32 affirmed, &c.

CHARLES CURIE,
Attorney for defendant in error.

(Endorsed:) U. S. Supreme Court, William H. Robertson, plaintiff in error vs. Robert G. Glendenning et al., defendants in error, joinder in error, Chas. Curie, esq., attorney for def't in error, 44 Exchange Place, N. Y. City. Due service of a copy of the within is hereby admitted. N. Y., June 9, 1886. Stephen A. Walker, attorney for pl'ff in error. U. S. Circuit Court. Filed June 9, 1886. Timothy Griffith, clerk.

33 *Citation.*

UNITED STATES OF AMERICA, *ss:*

To Robert G. Glendinning, George McLeish & James R. Eccles, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October, eighteen hundred and eighty six, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein William H. Robertson is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Dated May 20, 1886.

ADDISON BROWN.

34 (Indorsed:) 9510. U. S. Supreme Court, William H. Robertson, plaintiff in error, against Robert G. Glendinning et al., defendants in error. Citation. Stephen A. Walker, attorney for plaintiff in error.

Due service of a copy of the within is hereby admitted this 20 day of May, 1886.

CHAS. CURIE,
Att'y for def'ts in error.

U. S. circuit court. Filed May 20, 1886. Timothy Griffith, clerk.

35 (Indorsement on cover:) No. 318. William H. Robertson, collector of the port of New York, plaintiff in error, *vs.* Robert G. Glendenning, George McLeish, and James R. Eccles. S. New York C. C. U. S. Filed August 19, 1886.

Supreme Court, U. S.
OCT 23 1889

In the Supreme Court of the United States.

OCTOBER TERM, 1889.

WILLIAM H. ROBERTSON, COLLECTOR of the port of New York, plaintiff in error,
vs.
ROBERT G. GLENDINNING, GEORGE McLEISH, and JAMES R. ECCLES.

No. 55.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR THE PLAINTIFF IN ERROR.

In the Supreme Court of the United States.

OCTOBER TERM, 1889.

WILLIAM H. ROBERTSON, COLLECTOR of the port of New York, plaintiff in error,
vs.
ROBERT G. GLENDINNING, GEORGE McLEISH, and James R. Eccles.
No. 55.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR THE PLAINTIFF IN ERROR.

STATEMENT OF CASE.

The action was brought to recover an alleged excess of duties exacted by the collector at the port of New York.

Plaintiffs below imported several packages of linen handkerchiefs, more or less embroidered on the edges (p. 9).

The collector classified the goods under the tariff act of 1883 (Schedule J, eighth paragraph, 22 Stat., 507), as "handkerchiefs," or as "other manufactures of flax * * * or of which flax * * * shall be the component material of chief value, not specially enumerated or provided for in this act, thirty-five per centum ad valorem," and collected such thirty-five per centum.

On the other hand, plaintiffs below claimed the articles were dutiable only at 30 per cent. ad valorem, under the eleventh paragraph of Schedule J, as "flax or linen, * * * embroideries, or manufactures of linen * * * not specially enumerated or provided for in this act, thirty per centum ad valorem."

The court below "directed the jury to return a verdict for the plaintiffs, to which ruling the counsel for the defendant excepted, which exception was duly allowed" (p. 9).

SPECIFICATION OF ERROR.

The court erred in thus directing a verdict for plaintiffs (p. 9).

BRIEF OF ARGUMENT.

I.

Plaintiffs below had the affirmative, and the burden was on them of showing that the collector was in error. (*Arthur* v. *Unkart*, 96 U. S., 118).

Plaintiffs *did not prove* that these handkerchiefs were not "manufactures" of which flax was "the component

material of chief value." It was shown that "the body of the cloth" (p. 9) was of flax, but no evidence whatever was given upon its value as compared with that of the remaining material.

It is true that on the trial defendant conceded "that the embroidery is a substantial part of the handkerchiefs" (p. 9; m. p. 26), but this concession, *thus worded*, does not relieve them under the phraseology above noted.

Plaintiffs were not entitled to a verdict until they had affirmatively shown that these goods were neither handkerchiefs nor articles of which flax was the component material of *chief* value.

II.

Plaintiffs affirmatively proved that these articles were "*handkerchiefs*" (p. 9).

The plaintiff testifies:

> I do not dispute they are handkerchiefs. They *are handkerchiefs*—embroidered handkerchiefs; they are handkerchiefs that have been embroidered.

Does the fact that there was embroidery on the outer edges of these handkerchiefs make them any the less "handkerchiefs"?

III.

Congress having *designated* in paragraph eight (Schedule J) the article "*handkerchiefs*," and by such name imposed a duty upon it, the general terms in paragraph eleven, even if sufficiently broad to comprehend such article, are not applicable to it. (*Arthur* v. *Lahey*, 96 U. S. 112, 113, and cases cited.)

IV.

The word *handkerchiefs*, in paragraph eight (Schedule J), comes much nearer to being a correct designation of the article imported, than the word *embroideries*, in paragraph 11.

It is submitted, that if a lady should enter the store of the plaintiff below and ask to see their "*handkerchiefs*" she would be shown these identical goods, while if she went in and inquired for "*embroideries*" she would not be shown them, unless she made a more specific inquiry.

V.

The importer's interpretation presupposes that Congress intended to *discriminate* in its imposition of duties *in favor* of the *affluent*.

Plaintiff's contention is in effect, that the poor, who buy cheap handkerchiefs, must pay 35 per cent. ad valorem, while the rich, who buy handkerchiefs that are embroidered, pay only 30 per cent. ad valorem.

It is submitted that Congress did not intend to do anything of that kind.

O. W. CHAPMAN,
Solicitor-General.

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In the Supreme Court of the United States.

OCTOBER TERM, 1889.

WILLIAM H. ROBERTSON, COLLECTOR of the port of New York, plaintiff in error,
vs.
ROBERT G. GLENDINNING, GEORGE McLEISH, and JAMES R. ECCLES.
No. 55.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR THE PLAINTIFF IN ERROR.

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IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR THE PLAINTIFF IN ERROR.

STATEMENT OF CASE.

The action was brought to recover an alleged excess of duties exacted by the collector at the port of New York.

Plaintiffs below imported several packages of linen handkerchiefs, more or less embroidered on the edges (p. 9).

The collector classified the goods under the tariff act of 1883 (Schedule J, eighth paragraph, 22 Stat., 507), as "handkerchiefs," or as "other manufactures of flax * * * or of which flax * * * shall be the component material of chief value, not specially enumerated or provided for in this act, thirty-five per centum ad valorem," and collected such thirty-five per centum.

On the other hand, plaintiffs below claimed the articles were dutiable only at 30 per cent. ad valorem, under the eleventh paragraph of Schedule J, as "flax or linen, * * * embroideries, or manufactures of linen * * * not specially enumerated or provided for in this act, thirty per centum ad valorem."

The court below "directed the jury to return a verdict for the plaintiffs, to which ruling the counsel for the defendant excepted, which exception was duly allowed" (p. 9).

SPECIFICATION OF ERROR.

The court erred in thus directing a verdict for plaintiffs (p. 9).

BRIEF OF ARGUMENT.

I.

Plaintiffs below had the affirmative, and the burden was on them of showing that the collector was in error. (*Arthur* v. *Unkart*, 96 U. S., 118).

Plaintiffs *did not prove* that these handkerchiefs were not "manufactures" of which flax was "the component

material of chief value." It was shown that "the body of the cloth" (p. 9) was of flax, but no evidence whatever was given upon its value as compared with that of the remaining material.

It is true that on the trial defendant conceded "that the embroidery is a substantial part of the handkerchiefs" (p. 9; m. p. 26), but this concession, *thus worded*, does not relieve them under the phraseology above noted.

Plaintiffs were not entitled to a verdict until they had affirmatively shown that these goods were neither handkerchiefs nor articles of which flax was the component material of *chief* value.

II.

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It is submitted, that if a lady should enter the store of the plaintiff below and ask to see their "*handkerchiefs*" she would be shown these identical goods, while if she went in and inquired for "*embroideries*" she would not be shown them, unless she made a more specific inquiry.

V.

The importer's interpretation presupposes that Congress intended to *discriminate* in its imposition of duties *in favor* of the *affluent*.

Plaintiff's contention is in effect, that the poor, who buy cheap handkerchiefs, must pay 35 per cent. ad valorem, while the rich, who buy handkerchiefs that are embroidered, pay only 30 per cent. ad valorem.

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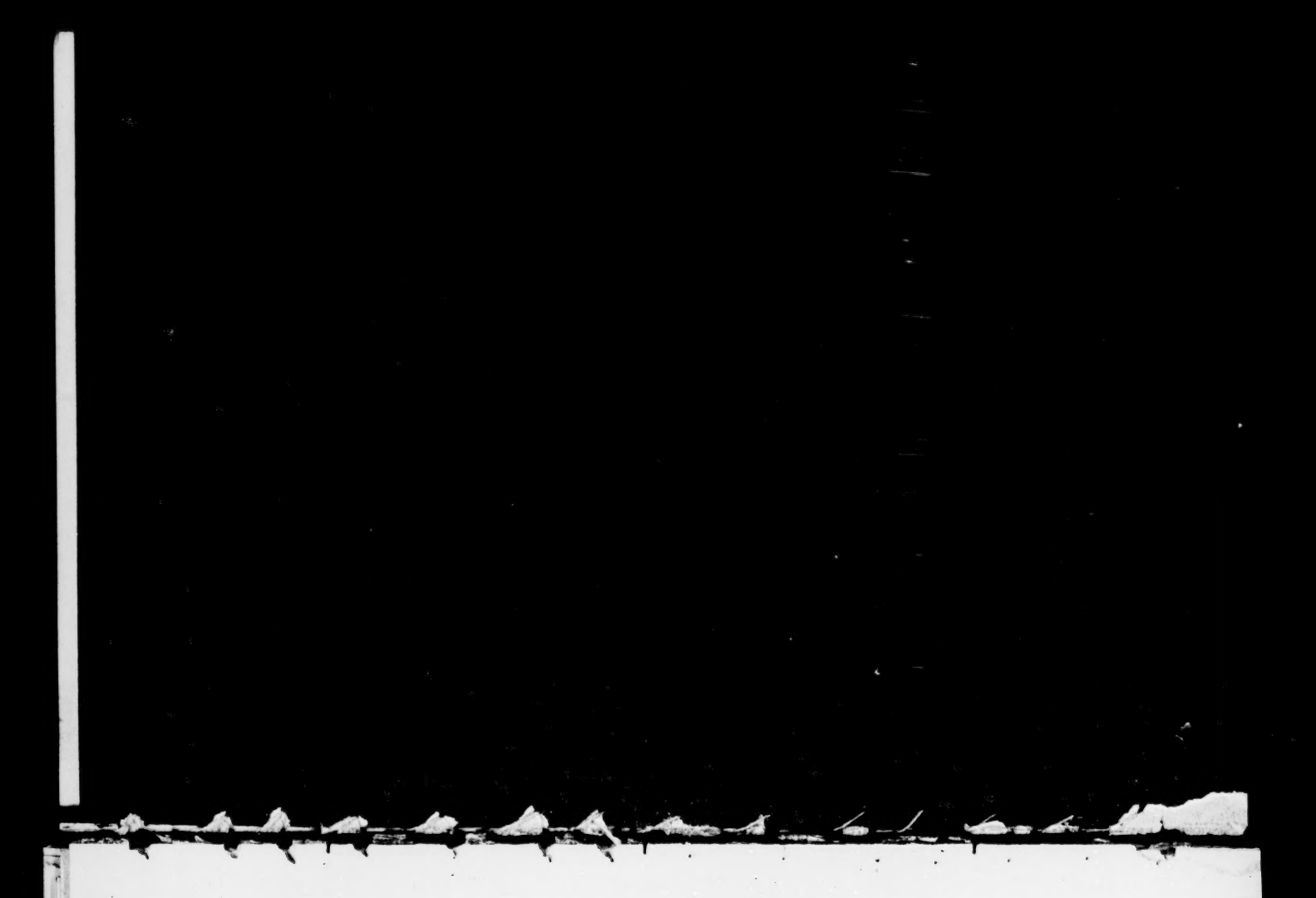

Supreme Court of the United States.

WILLIAM H. ROBERTSON, Collector of the Port of New York, Plaintiff in Error, vs. ROBERT G. GLENDINNING, GEORGE McLEISH and JAMES R. ECCLES, Defendants in Error.	Oct. Term, 1889. No. 55.

BRIEF IN BEHALF OF DEFENDANTS IN ERROR.

Statement.

In the year 1884 defendants in error imported at the port of New York certain embroidered manufactures of linen upon which the Collector, the plaintiff in error, assessed a duty of 35 % *ad valorem*, under the following provision of Schedule J of the Act of March 3d, 1883 (22 Statutes, 507) :

"Brown and bleached linens, ducks, canvas, paddings, cot bottoms, diapers, crash, huckabacks, handkerchiefs, lawns, or other manufactures of flax, jute, or hemp, or of which flax, jute, or hemp shall be the component material of chief value, not specially enumerated or provided for in this act, thirty-five per centum *ad valorem*."

The defendants in error paid this duty under pro-

test, claiming that said goods were only liable to 30% *ad valorem*, under another provision of the same schedule, as follows :

" Flax or linen laces and insertings, embroideries, or manufactures of linen, if embroidered or tamboured in the loom or otherwise, by machinery or with the needle or other process, and not specially enumerated or provided for in this act, thirty per centum *ad valorem*." *Ibid.*

Samples of the goods in question were produced in evidence and it appeared that the body of the cloth of the article was linen cambric, that is, made of flax, and that the articles in question were known in trade as embroidered handkerchiefs. (Record, p. 9.)

It was conceded that the embroidery was a substantial part of the handkerchief and that it was done with cotton (*Ib.*).

All the requirements as to protest, appeal, and time of bringing suit having been complied with, the Court, there being no dispute as to the facts, directed a verdict for the importers for the difference claimed (*Ib.* bottom).

POINTS.

Effect is to be given to both provisions of the statute in question and they are to be construed together.

Pennington vs. Coxe, 2 Cranch, 33, 52.
Ogden vs. Strong, 2 Paine, 587.
Stewart vs. Maxwell, 16 How., 159, 160.
Arthur vs. Lahey, 96 U. S., 112, 117.

Giving such effect the goods in question are liable only to the lower rate of duty.

The first paragraph, that under which the duty was

assessed, enumerates every variety of linen manufacture; the second paragraph is really in effect a proviso. If the articles in the first paragraph enumerated are embroidered, then they pay the lower rate of duty.

Thus, in Solomon vs. Arthur, 102 U. S., 208–212, the Court say:

"It is observable that the description of 'manufactures made of mixed materials, in part of cotton, silk,' &c., is more general than that of 'manufactures of which silk is the component part of chief value.' Logically, the two phrases standing together in the same act or system of laws would be related as follows: 'Goods made of mixed materials, cotton, silk, &c., shall pay a duty of thirty-five per cent.; *but if* silk is the component part of chief value, they shall pay a duty of fifty per cent.'"

In the present contrasting sections we find the "if"; and the two sections are to be read on this point as though they read: "On linen handkerchiefs thirty-five per cent. *ad valorem*, but if embroidered thirty per cent. *ad valorem*."

This last case is cited with approval in Fisk vs. Arthur, 103 U. S., 431, 433.

In no other way and by no other method of construction can effect be given to both provisions.

It is true that the article imported was primarily a handkerchief of linen, and if it had been nothing more, it was undoubtedly like all other simple manufactures of linen, liable to duty at 35 per cent.; but it was a handkerchief that had been embroidered with another material, and so embroidered that the embroidery had become a substantial part of the handkerchief, and thus brought within the exact enumeration to which the lower rate of duty applied, viz., "a manufacture of linen which had been embroidered."

The second provision, it will be noticed, applies to all manufactures of linen *if* embroidered.

In other words, as a handkerchief of linen the rate of duty would be 35 per cent. *ad valorem*, but being embroidered it comes within the lower category. It is a manufacture of linen which (if exclusively such and only such) is dutiable at 35 per cent. *ad valorem*, but it is also a manufacture of linen which, *if* embroidered is dutiable at only 30 per cent. *ad valorem*. The lower rate of duty is, therefore, here applicable (see cases, *supra*).

Every *embroidered* manufacture of flax pays 30 per cent. unless, being so manufactured, it is otherwise specially enumerated or provided for with reference to *this* characteristic.

In conclusion we submit that it would be conceded if the paragraph under which we claim had contained the words "embroidered handkerchiefs" instead of "embroideries," that that would have been a more restricted and specific enumeration than "handkerchiefs" in the provision under which the duty was exacted. But the present phraseology "embroideries" or "manufactures of linen *if* embroidered" is just as distinct a restriction to, and enumeration of, the kind of handkerchiefs, which are the subject of the action, as if the words "embroidered handkerchiefs" had been used in the act. The being embroidered is the dutiable characteristic.

"The test of the rate of duty is that of embroidery or not."

Arthur vs. Homer, 96 U. S., 137-140.

In this case this Court held certain linen dress goods in the piece to be dutiable, not as manufactures of

linen, but as embroideries under provisions of the statute similar to the ones under consideration.

The direction of the Court, therefore, there being no dispute as to facts, was correct and the judgment should be affirmed.

STEPHEN G. CLARKE,
Of Counsel for Defendants in Error.

Supreme Court of the United States.

WILLIAM H. ROBERTSON, Collector of the Port of New York, Plaintiff in Error, vs. ROBERT G. GLENDINNING, GEORGE McLEISH and JAMES R. ECCLES, Defendants in Error.	Oct. Term, 1889. No. 55.

BRIEF IN BEHALF OF DEFENDANTS IN ERROR.

Statement.

In the year 1884 defendants in error imported at the port of New York certain embroidered manufactures of linen upon which the Collector, the plaintiff in error, assessed a duty of 35 % *ad valorem*, under the following provision of Schedule J of the Act of March 3d, 1883 (22 Statutes, 507):

"Brown and bleached linens, ducks, canvas, paddings, cot bottoms, diapers, crash, huckabacks, handkerchiefs, lawns, or other manufactures of flax, jute, or hemp, or of which flax, jute, or hemp shall be the component material of chief value, not specially enumerated or provided for in this act, thirty-five per centum *ad valorem*."

The defendants in error paid this duty under pro-

test, claiming that said goods were only liable to 30% *ad valorem*, under another provision of the same schedule, as follows :

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Samples of the goods in question were produced in evidence and it appeared that the body of the cloth of the article was linen cambric, that is, made of flax, and that the articles in question were known in trade as embroidered handkerchiefs. (Record, p. 9.)

It was conceded that the embroidery was a substantial part of the handkerchief and that it was done with cotton (*Ib.*).

All the requirements as to protest, appeal, and time of bringing suit having been complied with, the Court, there being no dispute as to the facts, directed a verdict for the importers for the difference claimed (*Ib.* bottom).

POINTS.

Effect is to be given to both provisions of the statute in question and they are to be construed together.

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